

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

WAYNE THOMAS,	§	
an individual,	§	
Plaintiff,	§	
v.	§	CIVIL ACTION NO. H-4:22-cv-2001
	§	
5860 SAN FELIPE, LTD.,	§	
a Texas Limited Partnership,	§	
Defendant.	§	

**DEFENDANT 5860 SAN FELIPE, LTD's RESPONSE TO  
PLAINTIFF'S SECOND MOTION TO STRIKE DEFENDANT'S REPLY BRIEF  
AND MOTION FOR LEAVE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, 5860 SAN FELIPE, LTD (hereinafter referred to as "Defendant") and, files this Response to Plaintiff's Second Motion to Strike Defendant's Reply Brief [Doc. 85] and Motion for Leave, and ins support thereof, would respectfully show the Court the following:

**I. Brief Response**

Plaintiff continues to dump unnecessary filings on this Court, this time in the form of yet another Motion to Strike. [Doc. 85]. Defendant will not rehash its arguments and will keep its response brief.

Plaintiff completely misses the point. It was only *after* the court's ruling on a specific modification did the evidence become available. [Doc. 76.] Defendant argued at trial that all readily achievable modifications had been made. *See id.* At Trial Plaintiff's expert provided no drawings or feasibility studies, only a litany of potential modifications that *may* work. *See id.* When this Court ordered a specific modification, Defendant attempted to comply. It was *only then* that the Defendant learned the specific modification could not be accomplished because it would violate the ADA. *See id.* Defendant filed a Motion for New Trial and explained why the

modification could not be accomplished. [Doc. 76.] Plaintiff responded that it did not have all of the drawings, and Defendant supplied them in a Reply brief. The Reply brief was docketed based on the court's docket date of September 27, 2024, for the Response. To the extent the Reply Brief was untimely, Defendant seeks Leave of Court to file it late.

Additionally, Defendant's Reply included a specific response to Plaintiff's expert's report that was submitted with its Response to Defendant's Motion for New Trial, and specifically addressed arguments raised in the Response. Defendant's expert did not "abandon the toilet stall justification" [Do. 85 at p.6] but explained the continuous unobstructed path requirements, just as he did in the original report filed with the Motion for New Trial. Plaintiff's Motion is fraught with misrepresentations of Defendant's expert's report.

The bottom line is that the evidence Defendant submitted was all gathered post-trial when Defendant attempted to comply with the Court's Order and is permissible under Rule 59(e).

## **II. CONCLUSION AND PRAYER**

WHEREFORE, PREMISES CONSIDERED, Defendant 5860 SAN FELIPE, LTD, LLC respectfully requests that the Court Deny Plaintiff's Motion to Strike, grant Defendant's Motion for Leave if the Reply Brief is deemed Untimely, and Grant Defendant's Motion for New Trial only as to the portion of its Order relating to modification of the curb ramp, entering a final judgment denying all relief requested by Plaintiff, and for any other relief to which Defendant has shown itself justly entitled.

Respectfully submitted,

**MEHAFFYWEBER, P.C.**

By: /s/Maryalyce W. Cox  
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**ATTORNEY FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

This will certify that a copy of the foregoing document was furnished to counsel for Plaintiff on October 25, 2024, pursuant to the Federal Rules of Civil Procedure.

Maryalyce W. Cox  
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